

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA, et al.

5 Plaintiffs,

Civil Action No.
1:21-cv-11558-LTS

6 v.

7 AMERICAN AIRLINES GROUP, INC.,
8 et al.,

9 Defendants.

10
11
12 BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

13 STATUS CONFERENCE
14 Via Videoconference

15
16 Wednesday, August 17, 2022
17 3:02 p.m.

18
19
20
21 John J. Moakley United States Courthouse
22 One Courthouse Way
Boston, Massachusetts

23 Rachel M. Lopez, CRR
24 Official Court Reporter
25 raeufp@gmail.com

A P P E A R A N C E S

On behalf of the Plaintiff United States of America:

UNITED STATES DEPARTMENT OF JUSTICE
BY: WILLIAM H. JONES, III
450 Fifth Street, Northwest
Suite 8000
Washington, D.C. 20530
(202) 514-0230
bill.jones2@usdoj.gov

On behalf of the Defendant American Airlines Group, Inc.:

LATHAM & WATKINS, LLP
BY: DANIEL M. WALL
505 Montgomery Street
Suite 2000
San Francisco, California 04111
(415) 391-0600
dan.wall@lw.com

On behalf of the Defendant JetBlue Airways Corporation:

SHEARMAN & STERLING LLP
BY: RICHARD F. SCHWED,
599 Lexington Avenue
New York, New York 10022
(212) 848-4000
richard.schwed@shearman.com

P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

Today is Wednesday, August 17th, 2022, and we are on the record in civil action 21-cv-11558, the United States of America, et al., versus American Airlines Group, Inc., et al.

Will counsel identify themselves for the record.

THE COURT: You don't all have to identify yourselves. Why don't we just start -- whoever is going to speak is fine.

For the government?

MR. JONES: Good afternoon, Your Honor, Bill Jones with the Department of Justice for Plaintiff United States.

THE COURT: Good afternoon.

MR. WALL: Good afternoon, Your Honor, Dan Wall, Latham & Watkins, for American Airlines.

THE COURT: Good afternoon.

MR. SCHWED: Good afternoon, Your Honor, Rich Schwed, Shearman & Sterling, for Jet Blue.

THE COURT: Good afternoon.

Okay. So is the first and primary issue when are we going to have trial, not just -- but which particular days

1 and times? Or are there more issues than that that you wish
2 for me to resolve?

3 MR. WALL: Your Honor, this is Dan Wall. There are
4 a few related things, certainly that the input into a lot of
5 the things that we need to work on together with the
6 plaintiffs is -- is just understanding the trial schedule and
7 how many days, which days are dark, and, you know, just
8 things like that.

9 THE COURT: Sure.

10 MR. WALL: We have a lot of meeting and conferring
11 to do on trust clocks, and things like that, all of which
12 matter.

13 The second thing has to do with a notice to some of
14 the distant witnesses, in particular the senior executives
15 that we would -- we would like to talk about that.

16 There's a couple of -- of other points that have to
17 do -- that help us figure out how the trial will go and the
18 length of the trial, such as how Your Honor wants to receive
19 a deposition designation -- designations and resolve
20 objections to exhibits.

21 And I guess the final thing that we would just like
22 to have Your Honor's views on is how we're going to deal with
23 confidentiality issues, because, typical in a case like this,
24 there's lots of both party and third-party confidential
25 information, and any guidance that we could get from

1 Your Honor about how we're going to deal with that would be
2 very welcome.

3 THE COURT: Okay. Let me start with the first,
4 which is the potentially easiest.

5 In terms of scheduling, the following for sure. We
6 start on -- I was thinking, or planning that we start on
7 Monday, 9/26. And so excepting the Jewish holidays, and any
8 other religious holiday that somebody else celebrates -- and
9 if they do, then they need to tell me.

10 When I say the "Jewish holidays," I should be clear
11 that what I mean is, for me, we won't sit for the first day
12 of Rosh Hashanah, and we won't sit the one day of Yom Kippur.
13 I haven't looked at the calendar at the moment to map those
14 to when they fall, and the like.

15 If someone doesn't want to work on the second day
16 of Rosh Hashanah, or there are other Jewish or other
17 religious holidays they want to celebrate, tell me, and we'll
18 accommodate that in some way.

19 So with that in mind, starting on 9/26 for -- you
20 talked about three weeks. So I have for those next --
21 starting on 9/26, those three weeks, for sure, every day,
22 9:00 to 1:00. 9:00 a.m. to 1:00 p.m. That's blacked out.
23 The only exception to that is, obviously, we're closed on
24 Monday, the 10th.

25 I'm open to, if you wanted to, you know -- if you

1 want to start at 8:30, either always or sometimes, if that's
2 helpful, I'm open to do that. I prefer -- well, so I leave
3 that as a possibility.

4 In terms of afternoons, I'm open to sitting in the
5 afternoons. I have some other -- I have other proceedings,
6 so I can't -- as I sit here now, I can't promise you every
7 single afternoon in that three-week window. I certainly
8 can -- some of it depends on all of you. I'm happy to do two
9 things in the afternoon. I can identify afternoons where I
10 may be able to give you the whole afternoon. So say we're on
11 trial 9:00 to 1:00, and then we broke for lunch, and then we
12 resumed at 2:00, and I can give you until 2:00 to 4:00, 4:30.
13 I mean, I can go past that, but I worry that that's a long
14 time for everybody, particularly me, to focus just on what
15 you're presenting. But something like that.

16 There are other days, if it works for you, that I
17 can't give you the whole afternoon, because I might have some
18 other proceeding, but I can give you some of the afternoon.
19 So if you're open to that, I can tell you, "Well, this day
20 you could have 2:00 to 3:00," or, "On this day you could have
21 2:00 to 3:00 and 4:00 to 5:00," or something like that.

22 So if, in addition to the 9:00 to 1:00, you want me
23 to identify blocks of time in the afternoons, I'm happy to do
24 that. And I could issue something -- I'd need to go back
25 over the calendar a little more carefully than in this status

1 conference, but I could get you something, issue something by
2 probably next week some time that would tell you, "Here's
3 times you can count on that you have me for in the afternoons
4 during those three weeks, blocks of time."

5 MR. WALL: I think that would be great, Your Honor,
6 if you could do that. I'm pretty sure that I speak for all
7 of us that we will consume all of the hours that you offer up
8 to us.

9 THE COURT: Okay. So what I'll do, then, is -- I
10 should be able to get that done by the middle of next week.
11 I'll give you something that tells you each day blocks of
12 time. You can -- you can already know that it will be 9:00
13 to 1:00 every day, but I'll tell you other blocks of time in
14 the afternoons.

15 I take it that three weeks remains reasonable?

16 MR. WALL: Yes.

17 MR. JONES: Your Honor, Bill Jones for the United
18 States. If I may, Your Honor, three weeks does remain
19 reasonable, though I would ask Your Honor if we could revisit
20 this once we get the full schedule of the afternoons that
21 Your Honor would be available and the partial afternoons
22 Your Honor would be available.

23 THE COURT: Sure. Okay. You can further answer
24 that after you look at that.

25 MR. SCHWED: And Your Honor, if I may, I don't want

1 to start with a negative, but I do believe the 26th is the
2 first day of Rosh Hashanah.

3 THE COURT: Oh. Thank you. Then we won't sit that
4 day.

5 MR. SCHWED: And I think, from my client's
6 perspective, I think there may be a witness or two who
7 couldn't do the 27th, but I don't think that affects whether
8 we go forward. There may just be a witness ordering issue if
9 we actually get to witnesses on the 27th.

10 THE COURT: So my suggestion on that is, number
11 one, for something like that, we shouldn't call that witness
12 on the 27th. We should take them out of order. And all of
13 you should work together to figure that out. I'm not going
14 to make anyone come to court as a witness on a day that they
15 would -- that they would be celebrating a religious holiday
16 that would preclude them in their view to testifying. So my
17 view would, then, the lawyers and I should accommodate that,
18 and that person will testify on the 28th or the 29th or some
19 other day. No problem with that at all.

20 So Rosh Hashanah starts on Sunday evening, the
21 25th?

22 MR. SCHWED: That's what my calendar says.
23 Your Honor. I believe it's right.

24 THE COURT: I have no idea. I haven't looked.

25 MR. SCHWED: Yeah.

1 THE COURT: All right. I think that might be
2 right. All right. So then we will start on the 27th.

3 And I think if I were to add days, a day to make
4 that up or a day to make up the federal holiday, I'd likely
5 add it at the other end, rather than beforehand. I assume
6 you all prefer that, as well. Okay. So that's the first
7 item I'll put out the schedule.

8 In terms of deposition designations and objections
9 to exhibits, so let me say one thing, and then I'd like to
10 hear you a little more about what you mean by that and what
11 you're thinking about. I'm assuming -- correct me if I'm
12 wrong -- that when we're done with the trial, you are all
13 going to want to submit proposed findings of fact and
14 conclusions of law, and you're not going to want to do that
15 until after all the evidence is in; is that right?

16 MR. WALL: That's correct, Your Honor.

17 MR. JONES: Yes, Your Honor, that's correct.

18 THE COURT: Okay. So the deposition designations,
19 are these designations of depositions that you wish to admit
20 into evidence in lieu of the person testifying live?

21 MR. WALL: Yes. That's what we're talking about,
22 yes.

23 THE COURT: Okay. So I would say as to that, for
24 the designations, you need to provide me whatever it is I'm
25 going to read, and the -- either the whole thing and the

1 portions marked. And then, if it's helpful, if in the
2 witness -- if in the presence of the trial, it's helpful for
3 me to have read, you know, deposition X of Mr. Jones, before
4 day 6 of the trial, because the witness on day 6 in some way
5 knowing what that -- what the deposition says is meaningful
6 to understand it, I would like you to tell me that and
7 provide it to me in advance to read. And I will do that.
8 I'll read it in advance.

9 So in terms of objections, you know, I guess it's a
10 little bit different than -- ordinarily I would say I want to
11 resolve the --

12 If this were a jury trial, I would tell you this:

13 Make your motions in limine in advance. I'll
14 resolve them or defer them. We meet every morning before
15 9:00 a.m. to go over your objections and evidentiary issues
16 that relate to that day, so we wouldn't waste the jury's time
17 watching us argue about things at sidebar. And then I would
18 resolve them as they came up, if I hadn't resolved them in
19 advance or in the morning. Here it's a little bit different
20 because there is no jury.

21 And so -- but still, I think in some general way --
22 I'd rather not resolve all of the evidentiary issues
23 afterwards. I'd rather resolve them as we go. It seems to
24 make more sense or in advance. But I'm not sure what
25 you're -- beyond that general overview, what you're exactly

1 driving at.

2 MR. WALL: Your Honor, if I may, I mean, I think
3 the issue with -- is there are a lot of exhibits that are
4 going to be put on the list, probably a lot more exhibits
5 that you'll ever read or ever need to deal with. And while
6 that's on us, it's just the reality of how this happens. And
7 our proposal is that the Court resolve and make any decisions
8 about the admission of exhibits as they are used. That
9 limits it to your work to only having to deal with the
10 objections that pertain to something that is used and not
11 just the great mass of documents. And that's how we would do
12 it.

13 Now, we realize fully that sometimes in court
14 trials, the judge will just hear the objection and just say,
15 "I'll take it under advisement," and move on. But even
16 that's better than a process where we have to try to make
17 what could be a very, very large number of unnecessary
18 determinations of admissibility.

19 THE COURT: Mr. Jones, what do you say?

20 MR. JONES: Your Honor, the process for dealing
21 with objections to exhibits has been in place, and we've
22 lived under that -- that laid-out process in the case
23 management order since November of last year. We think -- we
24 think these should be adjudicated in advance as best we can.
25 The parties should work hard to narrow the number of disputes

1 that are presented to Your Honor, but we think we can push
2 through and resolve these in advance. And in part,
3 Your Honor, not all of the exhibits will be necessarily for
4 live presentation. Some will be cited in the papers, as
5 Your Honor mentioned, in the post-trial papers.

6 We think that one purpose of having exhibit lists
7 due two months before trial was to try to resolve these as
8 best we can in advance. And that's consistent with the CMO,
9 and it's consistent with what we understand the local rules
10 lay out, in terms of trying to resolve these issues before
11 trial.

12 THE COURT: Print the case management order.

13 I just want to take a look at the case management
14 order.

15 So what you're saying is that -- I confess, I
16 apologize, I didn't reread that. I haven't looked at it
17 since I approved it a year ago. But what you're saying is
18 what's laid out in the case management order is a process to
19 disclose exhibits, resolve objections, sort of as typically
20 occurs before any civil trial. And then what's left gets
21 resolved by way of motions or objections in the course of the
22 pretrial and trial phase, Mr. Jones?

23 MR. JONES: Yes, sir. That is exactly what I'm
24 suggesting and laying out.

25 MR. WALL: Your Honor, if I may.

1 THE COURT: Yeah.

2 MR. WALL: Actually, the case management order
3 doesn't require the Court to resolve things at any given
4 point of time. That's why we're having this disagreement.
5 It requires this exchange.

6 To give you a sense of why we're balking a little
7 bit in trying to process all of this, the plaintiffs put
8 1,800 exhibits -- actually, excuse me, the combined number of
9 exhibits is 1,800 that we put on this. We're not going to
10 use 1,800 exhibits in this trial. And so, you know, rather
11 than go through a process that I think is largely pointless
12 of trying to figure out the admissibility of 1,800 exhibits,
13 we just thought it made sense to actually impose some
14 discipline on the process by limiting the arguments over
15 admissibility to those that people feel are worth making at
16 the time that something is used.

17 THE COURT: Give me a minute to -- I'm just
18 printing out the CMO. Let me take a look at one thing there.

19 (The Court reads the CMO.)

20 THE COURT: Well, Mr. Wall, here's my question.
21 Like most case management orders, this imposes lots of
22 obligations on you, and not very many on me. So my question
23 is, are you saying to me, "Look, Judge, we're going through.
24 We're partway through the process," by the dates, assuming
25 you're on track, "and what we're saying is we might submit

1 and say we object to all of these things, but we'd rather not
2 have you engage us lawyers in a process where you adjudicate
3 the admissibility of the 1,800 exhibits, but rather defer
4 that -- subject to one or two exceptions I'll describe, defer
5 that to when they come up, because many of them may just fall
6 away. And we'll have done that process. We'll have narrowed
7 it, and we won't have resolved them all, obviously." And
8 then you'll make them and make them as they go. But what we
9 don't want to -- what you're asking me is, "Don't, Judge,
10 plan on having hearings, and don't feel the need to rule on
11 all," however many of the objections there are, but
12 presumably a fair number.

13 The exception to that approach is that maybe you or
14 Mr. Schwed or Mr. Jones may want to make an evidentiary
15 motion in limine that's sort of more broad-based, rather than
16 about the admissibility of this question/answer in line 800
17 of this deposition. But it might be there's a line of
18 evidence, or what have you, that is not admissible, or it is,
19 and then may want to make that. And that may be worth --
20 that probably is worth, if there is such a swath --

21 MR. WALL: Yes.

22 THE COURT: -- making the motion. And I might
23 adjudicate that, or I might hear it and defer adjudicating it
24 until I hear the evidence. You're not talking about that.
25 You're talking the first piece.

1 MR. WALL: I am. And everything you're describing
2 is capturing our thinking exactly, Your Honor.

3 THE COURT: So you're thinking, then, you're not
4 asking me, for example, in the case management order, it
5 says, "Submit this joint submission," by this date. You're
6 not saying, "Don't do that," which is part of what Mr. Jones
7 sounds like he wants to do. You're saying, "After you get
8 that, Judge, we don't want you to engage us, necessarily, in
9 a process about every single one."

10 MR. WALL: I think that, Your Honor, that we will
11 find that a lot of the disputes that might be indicated by
12 that submission will disappear in the course of the trial and
13 never require your attention. So that's the benefit of
14 deferring it.

15 THE COURT: So if -- are you asking me to defer the
16 ruling, or are you asking you to defer the submission?

17 MR. WALL: The ruling.

18 THE COURT: Yeah.

19 MR. WALL: The idea is --

20 THE COURT: I think I got it. Hold on.

21 MR. WALL: Yeah.

22 THE COURT: So what you're saying is, you want to
23 do all the things that are set out in the CMO about the joint
24 submissions and the conferrals. You simply don't -- what
25 you're telling me, really, is that the army, I imagine, that

1 is behind you and Mr. Schwed, that they may come up with a
2 large number of objections, and you don't want to -- me to
3 think that you are going to be asking me to, like, resolve
4 those. Really what you want me to do is then when I get all
5 of that, putting aside ones that are the subject of an actual
6 motion in limine because they're broad-based or they're
7 larger or they determine whether an expert is admissible, or
8 what have you, something like that, that those -- that it
9 would be most efficient for me, in your view and for all of
10 you lawyers, is for me to resolve those as we go, that is, as
11 the trial is occurring.

12 MR. WALL: Exactly, Your Honor.

13 THE COURT: That doesn't seem -- at least what
14 you've told me so far, Mr. Jones, that doesn't disagree with
15 anything that you've described.

16 MR. JONES: Well, Your Honor, if I may.

17 THE COURT: Yeah.

18 MR. JONES: Stepping back just for a moment. There
19 are not objections lodged to the entire list of around 1,800
20 documents, so we're not dealing with all of them.

21 THE COURT: Sure.

22 MR. JONES: Some of the exhibits on both lists are
23 objected to. So we're not dealing with 1,800.

24 The second point that I would make, Your Honor, is
25 the meet-and-confer process just started to try to resolve

1 these. And I think it's incumbent upon both sides here to
2 engage in that process to try to resolve some objections, at
3 least as many as we can work through, on each of the
4 documents that -- that we have disagreements over, to narrow
5 the set.

6 Right now, we can't say definitively for Your Honor
7 how many disputes over documents or even buckets of documents
8 would exist after completing rigorous, good-faith
9 meet-and-confer process to try to resolve the objections that
10 we've exchanged over the initial list.

11 THE COURT: I think one thing that you both need
12 to -- or all three of you need to think about is this. You
13 need to engage in a meaningful way in the meet-and-confer
14 process so that you'll know -- to narrow, number one, the
15 extent of the objections, and, two, so you each understand
16 what the nature of the objections are. And you particularly
17 need to do that not so much for questions of waiver or
18 something like that, but because it will -- for these
19 reasons:

20 One, it will make a better presentation for all of
21 you and a better argument about the evidentiary issues, to
22 the extent you've engaged with it and each side knows what
23 the other side is thinking and can be prepared to respond to
24 it.

25 And the second reason is because this is a bench

1 trial, if, suppose, there's an issue that arises in --
2 Mr. Wall, you object to something that Mr. Jones has, or vice
3 versa, and the proponent of the evidence is, "Well, Judge,
4 they didn't bring that up in the meet-and-confer," you know,
5 what have you, what -- I'm not saying this happens every
6 time, but a possibly scenario, depending on what it is, is
7 like, well, okay, here's what it is; and I can take it under
8 advisement, and you can figure it out. I can't as easily do
9 that in a jury trial, but I can do that here, and that, to
10 some extent, drags out the proceedings, which isn't to the
11 benefit of any of you.

12 So I think the answer to this at the moment, I'm
13 going to think about -- first of all, I'm really glad you
14 brought it up because it's very helpful. And the answer is I
15 do think that you should engage in a meaningful way in the
16 meet-and-confer process, so you understand the nature of each
17 other's objections so you can engage with it, you can deal
18 with it. That is fair for all of you, and it makes it easier
19 for all of you to plan about what likely will get into
20 evidence. You can make your assessments about that or what
21 objections you can overcome.

22 And I think the answer to the resolution of the
23 question is simply it kind of depends, which is sort of where
24 I started before. There's obviously big-picture evidentiary
25 issues that I would resolve or try to resolve that affect the

1 scope of the evidence, or what have you, if they're capable
2 of resolution.

3 I think, as a practical matter, it's likely, I
4 think -- I'm not telling you anything that you don't know
5 when I say that I would think it's conceivable that the
6 armies that at least the defendants have and the department
7 may have its own army, I don't know, are capable of
8 generating more evidentiary objections than I'm capable of
9 rendering a detailed federal opinion on every single
10 evidentiary issue.

11 I'll resolve everything that I have to resolve
12 that's put to me, and I'll do it to the best of my ability.
13 And I won't, like, compromise a careful resolution. But so I
14 will -- but depending on how many there are, I have to -- I
15 will adjust how I do it. If there's one evidentiary issue
16 and it's worthy of an opinion, I might write it. As you
17 know, I'm not writing an opinion about 500 evidentiary
18 objections.

19 And I don't know if that is sufficiently
20 clarifying, but I think that they're -- oftentimes there are
21 evidentiary issues that can't be resolved until I hear the
22 evidence. And I certainly don't intend -- there's enough
23 difficulty issues, likely, that will be presented to me in
24 this case that I don't intend to resolve more than I need to
25 or resolve questions that I don't have to resolve.

1 MR. WALL: Thank you, Your Honor. I think we're
2 good for now. Thank you.

3 THE COURT: Okay.

4 MR. JONES: Your Honor, if I may?

5 THE COURT: Yes.

6 MR. JONES: One additional point on this topic.
7 For those -- for those exhibits that are unobjected to, on
8 either list, we would ask that those exhibits at the
9 appropriate time be both admitted, if there are no objection
10 lodged by either side.

11 THE COURT: I guess I would -- my thought would be
12 this. If there are no objections, then they're available to
13 either -- to anybody to put into evidence without a problem.
14 And I'm happy to do it the -- if you -- I have no problem
15 with somebody saying, "We want to offer now these one, ten,"
16 however many, "exhibits that are not objected to; we just
17 offer them into evidence." And you can do that, and that's
18 fine. And you don't -- if there's no objection, you don't
19 necessarily need to have a witness or other things,
20 foundation, or what have you.

21 The only observation that I would make about that
22 is that it -- you should think about what you want me to look
23 at. So if you admit it into evidence, I will think it's
24 something that I should look at. And though I understand why
25 there will be some things that maybe there's the back --

1 For example, you might have ten exhibits -- you
2 might have a summary chart, and you might want to introduce
3 into evidence the ten -- a box of documents that supports the
4 summary chart. The summary chart is not objected to. I
5 might only need to look at the summary chart; you might want
6 to put in the box, and that's okay.

7 On the other hand, you might have a box that you're
8 putting in. If it never gets referred to in the trial, I'm
9 going to be wondering what was the purpose of that box, and
10 what do I do with that. And -- so you should just think
11 about that, much the way you would in a jury trial, if you --
12 why are you introducing exhibits that you never talked about,
13 never asked the witness about, never referred to in your
14 opening or closing. And sometimes there's a reason, like the
15 box for the summary chart, for the record, so to speak,
16 but -- so that's just the caveat, because --

17 And the only reason that I make the observation --
18 I'm not going to preclude you from doing it, but I make the
19 observation because there definitely is not an army behind
20 me. And so I want to -- I intend to read everything that I
21 need to read in this case, and I'll do it carefully. And,
22 you know, my goal would be after you make your proposed
23 finding of fact and conclusions of law, to issue a decision,
24 you know, in a -- I'm not going to give it time, because I
25 don't know who's on the call, but I would -- I have no doubt

1 that I would want to issue it faster than it will be issued
2 because it will just take time to go through it. And so but
3 the more there is -- you should just think about that.

4 But there's no problem with offering them up, if
5 they're a group. But I'm not sure why you'd want -- if
6 there's 1,800, I guess I would ask you to think about why are
7 you going to offer 1,000 exhibits, if they're not going to be
8 referred to in any way.

9 Is that helpful, Mr. Jones?

10 MR. JONES: Yes, sir. Thank you.

11 THE COURT: Do you want to raise anything else?

12 Okay. All right.

13 In terms of the confidentiality, so what we're --
14 what are you thinking about?

15 MR. WALL: We're just thinking about the practical
16 problems. I will tell you from experience, Your Honor, that
17 oftentimes that the third parties who have been subpoenaed,
18 in this case the other airlines, get very, very protective
19 about the materials that they have produced and file motions
20 and try to have the courtroom sealed and things like that.

21 And from experience, courts don't all see it the
22 same way. I've had cases like this in front of judges who
23 would just not ever seal the courtroom and are very strict
24 with allowing any confidentiality, other cases there has been
25 more protection. So I just think we wanted to kind of open a

1 dialogue so that we can kind of guess about what to expect.

2 THE COURT: Sure.

3 Do you have anything that you want to add to that,
4 Mr. Jones?

5 MR. JONES: The only thing that I would say,
6 Your Honor, thank you, is that I think this is not quite ripe
7 for Your Honor. I think there's more that the parties can do
8 to come up with proposals, concrete proposals for Your Honor,
9 or where we can't or where we disagree, to lay those out in
10 writing for Your Honor, versus just kind of an --

11 THE COURT: I'm not going to resolve it now, but
12 I'm glad -- it's helpful to me to alert me to these issues,
13 so I can begin thinking about them.

14 So what I would tell you all is, without resolving
15 any of these potential disputes that could fall across a
16 whole range of levels of confidentiality or arguable
17 confidentiality of information, would be, one, sealing a
18 document is different, in my view, than sealing the
19 courtroom. And sealing the courtroom is a big deal, and I
20 have sealed courtrooms. But, off the top of my head, most of
21 the time I've sealed a courtroom has been in criminal cases,
22 not during trials, and mostly about matters that implicated,
23 for example, an attorney-client privilege or the safety of a
24 person, for example, a cooperator who might -- cooperating
25 witness or something where there's not -- we're not during

1 the trial or we're discussing, or something like that, and it
2 implicates the safety of an individual.

3 I'm not saying I wouldn't do it, but I think the
4 second observation is I'd likely look at the standards that
5 govern, you know, if you want to seal the courtroom, you're
6 going to have to show me the case law that says "seal the
7 courtroom," and the standard, and you'd have to meet that
8 standard. But I'm reluctant to seal the courtroom, and I'm
9 reluctant to seal the reasoning behind my decision, whatever
10 it is.

11 But that said, I can see -- and I'm not resolving
12 this now. I could imagine that this might be the kind of
13 case where I might issue a sealed decision or invite you to
14 comment about whether certain portions needs to be sealed
15 depending on what shakes out and what information and what
16 grounds and the decision, what have you, and receive some
17 input. I certainly want your input on all of these issues
18 from all of you. I don't have more general guidelines at the
19 moment to offer you on that.

20 But you know, on a summary judgment, the only thing
21 that I would say is summary judgment motion, you know, I
22 often seal all sorts of business information at the request
23 of a party because they say it's confidential, and I often
24 don't probe that more deeply. And typically, the decision
25 that I render on summary judgment is not sealed, and

1 typically the hearing on the motion for summary judgment is
2 not sealed. So that, for whatever -- that doesn't dictate
3 the answer to any particular issue that might arise under
4 this topic, but that's some guidance.

5 MR. WALL: Thank you, Your Honor. I agree with
6 Mr. Jones that we have a lot to talk about on this, and
7 directionally, this is helpful. So appreciate it.

8 THE COURT: Okay. Sure.

9 The last topic that I think you raised is the
10 senior executives.

11 MR. WALL: Right. And this is a limited issue,
12 about half a dozen people, Your Honor. This is not -- we'll
13 deal with the uncertainty generally, but, you know,
14 plaintiffs have included six very high level American and
15 Jet Blue executives, CEOs, and people that are in the
16 so-called C suite on their witness list.

17 We have an agreement, which is good news for
18 everyone, that when the government calls a witness like this,
19 we'll be able to cross-examine beyond the scope so that they
20 don't have to come back a second time. We'll get them on and
21 off. But we started a dialogue just trying to see if we
22 could at least get some reasonable prediction of when, in the
23 course of plaintiff's case-in-chief, they need the likes of
24 our CEOs or our chief commercial officers, you know, board
25 members, and so forth.

1 And I completely appreciate that there's some
2 uncertainty about that on the Department of Justice's side,
3 but they're proposing that we not resolve it until the
4 pretrial conference, which is a week before trial, which is a
5 little difficult. And so we were just hoping, as a matter of
6 courtesy to these witnesses, that we could have some sort of
7 guidelines or rules that, you know, at least give us some --
8 it's going to be the first week, it's going to be the end of
9 the first week, it's going to be the middle -- the beginning
10 of the second week, something that we can target and we can
11 rely on.

12 And also, just a representation that, in fact, they
13 are going to call these people. It's not mandatory, just
14 because they're on the witness list, but something that we
15 can rely on so that people can plan their lives.

16 THE COURT: Anything you want to say, Mr. Jones?

17 MR. JONES: Yes, sir, Your Honor. A couple of
18 things. First, I think our conversation at the beginning of
19 the hearing kind of illustrates the difficult spot that we
20 are in, in terms of giving precise predictions as to when
21 someone may be called. And so we would like to have some
22 more clarity in that sense.

23 But second, Your Honor, we certainly don't oppose,
24 and intend to, and if proposed, offering no less than seven
25 days' notice, which is consistent with the local rules for

1 when a witness would be called to testify. So we
2 certainly -- we certainly intend and have proposed that to
3 defendants.

4 Defendant's proposal was for a longer notice
5 period, and I think that's where the kind of disconnect comes
6 here. Defendants had proposed a 30-day notice period, which
7 for us, that is --

8 THE COURT: I have a suggestion for all of you.
9 Okay? First suggestion is, I will, no later than middle of
10 next week, issue for you a schedule that tells you exactly
11 the times that you have. That will help the government,
12 which is the plaintiff, plan a little more about their case.
13 And then my suggestion is you talk to each other further
14 about these six individuals, with these further observations
15 in mind.

16 I understand, Mr. Jones -- first of all, I
17 understand, Mr. Jones, why now --

18 I'm sorry if I keep turning, but there's different
19 screens here, so I'm trying to look at you and to see --
20 different ones of you appear on different screens, so it's a
21 little awkward.

22 So I understand why, (a), it's difficult for you to
23 figure any of this out, Mr. Jones, until you know when you
24 can -- what times you have for trial. You'll have that by, I
25 think, close of business Wednesday. And so then you can

1 puzzle over that a little bit and map things out, and that
2 will put you in a better position, I think, all of you, but
3 particularly the plaintiff. That will help you with that.

4 The second observation is I think you should talk
5 some more -- after that, you should talk some more about it.

6 The third considerations to keep in mind is this.
7 While the -- if the local rule is seven days' notice, that's
8 applicable to everyone. These six people as human beings,
9 they're not special. Okay? They're like every other witness
10 as people. They don't get a -- they're not special. They're
11 not -- as human beings, they're just people. They're not any
12 more important than any other witness.

13 But they hold offices, and the offices they hold
14 impose upon them bigger responsibilities and obligations that
15 are separate from them as human beings. They may perceive
16 that and they may not perceive that, depending on how they
17 are as human beings, but that's how I perceive it.

18 So I don't see any courtesy to the CEO as a human
19 being, any more courtesy than I would give to any witness.
20 All witnesses deserve courtesy. But as the CEO of a major
21 public company, he or she has lots of -- and this is
22 applicable, I assume, likely to the six -- you haven't named
23 them, but those six people that you're referring to,
24 Mr. Wall. They have lots of other responsibilities. There's
25 periodic, for example, probably quarterly board meetings, and

1 those board meetings are scheduled in advance and they have
2 to go to those board meetings. They have to prepare. And
3 there's a lot of obligations, and there's public filings and
4 responsibilities that relate to those board meetings and
5 other things that fall with their office.

6 And they are the person who holds that office, and
7 so I'm not so sure the seven day rule, which is a rule of
8 general application for all witnesses, is really sensibly
9 applied exactly to those -- to people who hold that kind of
10 office. And given they have an array of other meaningful
11 responsibilities, and it's not just -- it's not them as
12 people, individuals, and it's not just them, personal, like
13 they're -- this isn't just their personal business. They
14 don't own these businesses.

15 And I think they're both publically traded, right,
16 Mr. Wall?

17 MR. WALL: Yes.

18 THE COURT: So I think that's a consideration to
19 think about. But I think that -- that's why I think you
20 should be mindful of that. That said, you know, it doesn't
21 mean that the government has to decide next Friday that
22 they're going to testify on September 29th at 9 o'clock, and
23 just then, or what have you.

24 I think another -- so -- I think in the first
25 instance, after you have that schedule, you should talk to

1 each other and think about these considerations. The
2 government is entitled to be able to figure out its trial
3 schedule, too. But you may be able to do sort of a
4 winnowing, rather than like some time in these three weeks.
5 Maybe it will winnow it down a little bit some time in this
6 period, so even if that doesn't resolve exactly when, that is
7 helpful, the amount of time that they have to hold is less.

8 I will say, as applicable to them, and more
9 generally to other witnesses who maybe there might be other
10 considerations applicable to, you could also think about, I'm
11 fine to take witnesses out of order. So for example, if you
12 end up in that winnowing process and the CEO is going to
13 testify in a certain place, you know, you could potentially
14 agree that, well, that person will testify 9:00 a.m. on
15 Thursday. And if we haven't finished Wednesday's witness,
16 we'll break Wednesday's witness, do the CEO, do everything,
17 be done with the CEO, and then return to the other witnesses.
18 I'm okay with that, I do that in jury trials for individual
19 witnesses as appropriate, so I think that's a reasonable
20 consideration.

21 I don't think it's fair to ask the government now
22 to decide when they'll call these people specifically, but I
23 think the considerations that animate what I understand
24 Mr. Wall to be raising are fair and reasonable. And you need
25 to think about them, Mr. Jones, and that's part of, like,

1 what I suggest to you, you'll get the schedule. Talk to each
2 other. Maybe you can winnow it a little bit. Some of this
3 relates to your other trial schedule and planning, as the
4 other issues are unfolding. And so I hear that.

5 I'm hopeful -- I think that will be helpful to you,
6 that kind of guidance. I'm happy to talk to you again about
7 this. I will tell you, I'm not -- I'm not going to be
8 available at all between close of business next Wednesday and
9 Labor Day. I mean, I can -- I may be able to look at
10 something in e-mail, but I won't -- there will be no hearings
11 in that window of time. But I'm happy to be talking to you
12 about issues as they come up.

13 If it's helpful to have another conference, for
14 example, in early September or weekly, or what have you, I'm
15 happy to do that. And --

16 MR. WALL: Thank you, Your Honor.

17 THE COURT: Are there other issues that the
18 government wishes to raise today?

19 MR. JONES: Your Honor, one minor issue, and that's
20 just at some point we anticipate working with the defendants
21 to ask the Court about the potential of finding space in the
22 courthouse. But that, also, Your Honor, is something that we
23 need to discuss with defendants, I think, before approaching
24 Your Honor.

25 THE COURT: So what -- let me just cut -- I might

1 be able to short circuit that.

2 So if you want -- there's a couple places that you
3 can have space. One, if you're comfortable, you can leave
4 some boxes or materials in the courtroom, on the side. I'll
5 be having other proceedings, in addition to your proceedings
6 during the afternoons. I'm okay with that. But you have to
7 understand that they won't be under lock and key at all times
8 or, you know, the watchful eye of anybody from the court,
9 necessarily.

10 There is a -- between the courtroom and the public
11 doors, there's one conference room that's like a lawyer
12 conference room. We might be able to make that available to
13 you. And if you want to get further space in the courtroom
14 to store things or for meetings --

15 Is it to store things or for meetings?

16 MR. JONES: Your Honor, it's storage, but also
17 potentially for short meetings, as well.

18 THE COURT: Okay. Meetings where, like, you
19 might -- the government might want to meet with people just
20 the government and people, or the defense might want to meet,
21 or each other?

22 MR. JONES: Yes, sir.

23 THE COURT: All three of those.

24 MR. WALL: Private, I think he's talking about.

25 THE COURT: Say it again.

1 MR. WALL: I think he's talking about the former, a
2 space where the government can meet, and then, perhaps, a
3 space where we can meet. Honestly, we hadn't thought about
4 this, but it makes sense that he's raising it.

5 MR. JONES: That's right, Your Honor.

6 THE COURT: So I think what I would suggest is
7 this. You can talk -- I would suggest that you reach out, if
8 you want that -- the conference room, you're welcome to use
9 at any time to meet with, and it's big enough for probably
10 six to eight people -- eight would be kind of tight, but you
11 could do it -- to have a private meeting. It's right behind
12 the courtroom. That's always available to anybody. There
13 are other such rooms outside every courtroom, so you could
14 always use another one. Beyond that, I would suggest that
15 you talk to Rob Farrell, the clerk, or -- and you can tell
16 him that I suggested that you talk to him, you're looking for
17 space. But I don't know off the top of my head, other than
18 those rooms, that there's much space.

19 I think you might, for the government, be
20 looking -- I would say you call the US Attorney's Office
21 office and get space from them. They're in the building, and
22 I assume they could give you space and accommodate you. I
23 don't know that there's a lot of other space in the building,
24 other than those rooms.

25 But I would talk to Mr. Farrell about it. And I

1 would be supportive, if there is a space, to let you use it.
2 I just don't know what there is.

3 Anything else for the government or the defendants?

4 MR. JONES: No, sir, Your Honor. Thank you very
5 much for the time.

6 MR. WALL: Likewise, Your Honor. Thank you very
7 much for accommodating our requests. Appreciate it.

8 MR. SCHWED: Thank you.

9 THE COURT: No problem.

10 So two last things, then, for all of you. One, I'm
11 happy to meet with you. If you need another status
12 conference, you can just ask. You can just -- you can
13 explain to me what it's about, or you could just say, "We
14 want to have it," and I'll do it promptly, other than that
15 window of time that I told you.

16 Second, I want to remind all of you that, even
17 though that I know that this is a really big case for
18 everybody, I encourage -- I encourage people, lawyers, law
19 firms, and the government, to give opportunities to more --
20 to speak in court, whether it's argue or examine witnesses to
21 more than just the most senior lawyers on the case. I
22 understand why that's somewhat challenging generally and more
23 challenging in a high stakes case, as I assume this might be.
24 I still encourage it.

25 I will tell you what I have told individuals at

1 hearings, which is, if someone allows a less senior lawyer to
2 argue something, I'm fine with the rule -- or I will follow
3 the following, that if the more senior lawyer then wishes to
4 retract something, I will allow the more senior lawyer both
5 to clean up, to stand up and say, "Well, I want to add this
6 point or clarify that point," but also I will allow that
7 person to retract something that the person said, so that
8 there's not a risk that the younger lawyer did something
9 that, like, can prejudice the client. That is, the senior
10 lawyer can say, "You know what, Judge? That thing the person
11 said, we disavow that." You say that, I'll be fine. It's in
12 the record, but I won't treat it as said. I'll disavow it.
13 And that's part of encouraging them to give them the chance.

14 So I just say that to all of you. You don't have
15 to -- I'm not going to -- if you don't -- if only three of
16 you talk the whole time, I'm not going to complain. But know
17 that I do encourage that, and I will have that view about
18 claw-backing statements and willing to do other things to
19 accommodate people's interest so that they can do that and
20 not feel that it puts risk and takes on a risk that they
21 can't take.

22 Okay?

23 MR. JONES: Thank you, Your Honor. Thank you on
24 behalf of my team. Thank you.

25 THE COURT: Sure. All right. Have a good rest of

1 your summer, and --

2 MR. WALL: Thank you.

3 THE COURT: Thank you. It's good seeing you all.

4 MR. SCHWED: Thank you, Your Honor.

5 (Court in recess at 3:52 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 18th day of August, 2022.

/s/ RACHEL M. LOPEZ

Rachel M. Lopez, CRR
Official Court Reporter